

September 13, 2018

Public comment on proceeding 17-79:

I urge the FCC to:

- Postpone Commission action on these rules until November (at least), preferably postpone until January
- Open 60-90 day (minimum) public comment period on these rules, beginning immediately
- Post the draft order on the FCC home page

The reason is that the proposed rules are very significant changes that would have significant impacts across the U.S. affecting hundreds of millions of Americans, and the public should have lots of time to study the proposed rules (over 100 pages) and understand how all the parts fit together with the other parts and with existing rules, and to comment. FCC has completely failed to provide reasonable, sufficient time for all of this. FCC is apparently rushing through this process at break neck speed, providing the appearance of a public comment period but not the substance of it. Do not do this. Do not rush such hugely important rule changes.

Furthermore the proposed rules:

- Ignore ADA (the Americans with Disabilities Act) and people disabled by electromagnetic sensitivities.
- Radically redefines prohibition of service and applies it to every aspect of local and state regulation. All variables and rules imposed by local governments or states, including aesthetic rules, can fall under FCC's new interpretation of "effective prohibition" and therefore, allow carriers to sue. "A state or local legal requirement constitutes an effective prohibition if it 'materially limits or inhibits the ability of any competitor or potential competitor to compete in a fair and balanced legal and regulatory environment.'" (#79)

The FCC lacks the authority to make the proposed rules. There is a difference between legislation and rules. FCC has authority to make rules but not to legislate. Only Congress has the authority to legislate. The proposed rules conflict directly with the Telecommunications Act of 1996 as amended and as interpreted by the U.S. Courts of Appeals.

For example the proposed rules:

- Eliminate the "significant gap in coverage" as a consideration in cell tower decisions
- Redefine "collocation" as adding wireless infrastructure to any structure – all small cells are now defined as collocations unless they're on new towers, all new cellular facilities installed on buildings are collocations.
- Reinterpret and extend protection and permission for the telecommunications companies far beyond telecommunications into data and information services.

-- These infrastructure roll-outs become an unfunded mandate, putting costs on cities, counties, states, and local residents, reducing funding for local and state services, and reducing staff availability.

-- By these rules, the FCC regulates the public and state and local governments, instead of regulating the telecom and wireless carriers per its mandate (just like state utility commissions did on smart utility meters). FCC has flipped its mandate; that is, FCC is working as an agent and lobbying firm on behalf of AT&T, Verizon and the other telecommunications giants.

Cities, towns and counties have broad authority granted by state and federal law to regulate what goes on within their borders, including in the public right of way. States also have broad authority to regulate within their borders. Congress has the power to override state legislative authority but the FCC does not.

FCC simply cannot override local authority except as expressly provided by Congress. FCC cannot make these changes. It lacks the authority to make them. FCC cannot make or amend federal laws. Only Congress can make and amend laws. Where a proposed rule conflicts with federal law the proposed rule is unlawful, improper, and has no effect.

FCC is attempting to legislate by disguising its proposed legislation as rule making. This is unlawful and improper. FCC should completely rescind the proposed rules and start over from the starting point of acknowledging and accepting the role of cities, towns, counties and states to regulate within their own borders and the limitations on FCC's authority, which is on rule making but not legislation.

Thank you,

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